# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 3548 of 2007

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA** Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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**MEENABEN. W/O PARESHBHAI MANUBHAI PATEL. THRO.BROTHER- - Petitioner(s)**

**Versus**

**STATE OF FUJARAT THRO.SECRETARY & 2 - Respondent(s)**

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**Appearance :**

MR AR SHAIKH for Petitioner(s) : 1,
MR DIPEN DESAI GOVERNMENT PLEADER for Respondent(s) :1-3,

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**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 30/08/2007**

**ORAL JUDGMENT :**

1. The petitioner has invoked Article 226 of the Constitution for an appropriate writ to set aside the detention order dated 10.1.2007 of Police Commissioner, Surat, which was made in

exercise of the power conferred under section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "PASA"). According to the grounds of detention supplied to the petitioner under section 9 of PASA, the petitioner was stated to be a 'bootlegger' indulging in anti-social activities of storing and selling illicit liquor in the area of Surat City. And, a case under the Prohibition Act, being C.R.No.5649 of 2006, is stated to have been registered in DCB Police Station, Surat on 12.12.2006 in which 493 bottles of liquor is stated to have been seized as muddamal even as the petitioner was released on bail on 14.12.2006. It is further stated that the petitioner was likely to persist in her bootlegging activity which, in turn, was likely to cause danger to public health and public order. It was submitted by learned counsel Mr.Shaikh that, pursuant to the same criminal case and alleged seizure of the same stock of 493 bottles of liquor, the husband of petitioner was also detained under identical order and hence both the parents of two young children were under detention.

2. By filing an affidavit of the detaining authority, it is stated as under:

*"5. ....I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the detenu falls within the definition of "boot-legger" as defined u/s.2(b) of the PASA Act. Therefore, on carefully scrutinising, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion that the detenu is dealing in illegal liquor business and she is disturbing the public order, public peace and public health and it is likely that continuance of her anti-social and boot-legging activities may cause grave or wide-spread danger to life, property and public health. Therefore, after subjectively satisfying that the anti-social and boot-legging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the PASA Act with a view to immediately prevent her from continuing such illegal, anti-social and boot-legging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper. I say that all relevant materials and vital documents which have a bearing on the aspect of the matter and which were available have been placed before me and copies of all those documents which have been considered and relied upon by me for passing the order of detention against the detenu, have been supplied to the detenu along with the grounds of detention."*

3. In the above facts, it was sought to be

argued on behalf of the respondents that danger to public health caused by the activity of bootlegging by the petitioner substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing her detention were legal and justified.

**4.** However, as held by this Court in ***Amarbhai Kanjibhai Nayak V/s. Commissioner of Police Ahmedabad City & Ors. [1999(3)G.L.R.2703]*** and in ***Sohanlal Surajaram Visnoi V/s. State of Gujarat and others [2004(2)G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of Sub-Section (4) of Section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public

order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction. In the peculiar facts and circumstances, although the scale of activity attributed to the petitioner appears to be quite substantial, her status of being wife of the person who is also detained on the basis of the same facts and material indicate non-application of mind in mechanically passing the same order for both.

**5.** Therefore, in the facts and circumstances, impugned order dated 10.01.2007 of preventive detention is found and held to be unsustainable in law, and hence set aside with the direction that the petitioner shall be set at liberty forthwith unless required in connection with any other case to be detained in custody. Rule is made absolute with no order as to costs. Direct service is permitted.

Sd/-

***( D.H.Waghela, J.)***

*(KMG Thilake)*